

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	ASSISTANCE ID NO.			DATE OF AWARD 09/08/2010
		PRG	DOC ID	AMEND#	
		BF - 00E00383 - 0			
		TYPE OF ACTION New			MAILING DATE 09/15/2010
PAYMENT METHOD: ASAP			ACH# PEND		
RECIPIENT TYPE: State			Send Payment Request to: Las Vegas Financial Center		
RECIPIENT:			PAYEE:		
State of Michigan Land Bank Fast Track Authority 7150 Harris Drive Lansing, MI 48909 EIN: 38-6000134			State of Michigan Land Bank Fast Track Authority 7150 Harris Drive Lansing, MI 48909		
PROJECT MANAGER		EPA PROJECT OFFICER		EPA GRANT SPECIALIST	
Khalilah Burt-Gaston 7150 Harris Drive Lansing, MI 48909 E-Mail: gastonk@michigan.gov Phone: (313) 456-3590		Michael Gifford 77 West Jackson Blvd., SE-7J Chicago, IL 60604-3507 E-Mail: Gifford.Michael@epa.gov Phone: 312-886-7257		Mirchell Phillips Assistance Section, MC-10J E-Mail: Phillips.Mirchell@epamail.epa.gov Phone: 312-886-5265	
<b>PROJECT TITLE AND DESCRIPTION</b> BROWNFIELD REVOLVING LOAN FUND PROGRAM This award provides funding to the State of Michigan Land Bank Fast Track Authority (Land Bank) to capitalize a Revolving Loan Fund (RLF). RLF funds will be used for cleanup activities at eligible brownfields sites in the form of loans and subgrants. The approved work plan provides for: 1) establishing and marketing the RLF program; 2) developing model loan documents and 3) making loans/subgrants. In addition, the Land Bank will oversee cleanup to insure compliance with the approved cleanup plan, and protection of human health and the environment. The Land Bank anticipates making up to three loans during the project period.					
BUDGET PERIOD 08/01/2010 - 07/31/2015		PROJECT PERIOD 08/01/2010 - 07/31/2015		TOTAL BUDGET PERIOD COST \$1,200,000.00	
				TOTAL PROJECT PERIOD COST \$1,200,000.00	
<b>NOTICE OF AWARD</b>  Based on your application dated 05/26/2010, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$1,000,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,000,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS		
U.S. EPA Region 5 Mail Code MCG10J 77 West Jackson Blvd. Chicago, IL 60604-3507			U.S. EPA, Region 5 Superfund Division 77 West Jackson Blvd., S-6J Chicago, IL 60604-3507		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official		TYPED NAME AND TITLE Cyndy Colantoni, Associate Director for Resources Management		DATE 09/08/2010	
<b>AFFIRMATION OF AWARD</b>					
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>					
SIGNATURE <i>Carrie Lewand-Monroe</i> <i>Authorized Officer</i>		TYPED NAME AND TITLE Carrie Lewand-Monroe, Executive Director		DATE 9-23-10	

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,000,000	\$ 1,000,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 200,000	\$ 200,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 1,200,000	\$ 1,200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(3)	40 CFR PART 31

[illegible]

## Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
1. Personnel	\$64,000
2. Fringe Benefits	\$0
3. Travel	\$4,000
4. Equipment	\$2,000
5. Supplies	\$0
6. Contractual	\$55,000
7. Construction	\$0
8. Other	\$1,075,000
9. Total Direct Charges	\$1,200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$1,200,000
12. Total Approved Assistance Amount	\$1,000,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,000,000
15. Total EPA Amount Awarded To Date	\$1,000,000

## **Administrative Conditions**

### **1. FY 10 ACORN FUNDING RESTRICTIONS**

Congress has prohibited EPA from using its FY 2010 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

### **2. CONSULTANT CAP**

Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2010, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

### **3. COPYRIGHTED MATERIAL**

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- a. the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- b. termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

### **4. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

**CLEAN WATER STATE REVOLVING LOAN FUND - DRINKING WATER STATE REVOLVING LOAN FUND - BROWNFIELD REVOLVING LOAN FUND RECIPIENTS**

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

**Accepting the Fair Share Objectives /Goals of Another Recipient**

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the Michigan Department of Natural Resources & Environment as follows:

Combined Rate:            MBE: 3%            WBE: 5%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as Michigan Department of Natural Resources & Environment.

**Negotiating Fair Share Objectives /Goals, 40 CFR, Section 33.404**

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

**Objective/Goals of Loan Recipients**

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

**SIX GOOD FAITH EFFORTS , 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

#### **MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award and continuing until the project is completed. **Only procurements with certified MBE /WBEs are counted toward a recipient's MBE /WBE accomplishments.** The reporting period is **semiannual**, with reporting periods ending March 31<sup>st</sup> and September 30<sup>th</sup>. The reports must be submitted within 30 days of the end of the semiannual reporting periods, **April 30<sup>th</sup> and October 30<sup>th</sup>.**

Recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified loans to submit their MBE/WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

**Reports should be sent to :**

**Adrienne M. Callahan, Region 5 MBE/WBE Coordinator  
USEPA, Acquisition and Assistance Branch  
77 West Jackson Boulevard (MC-10J)  
Chicago, IL 60604**

**Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE /WBE reports.**

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

#### **CONTRACT ADMINISTRATION PROVISIONS , 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The recipient also agrees to ensure that recipients of identified loans also comply with provisions of 40 CFR, Section 33.302.

#### **BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

### **5. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

## **6. HOTEL-MOTEL FIRE SAFETY**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

## **7. LOBBYING AND LITIGATION - ALL RECIPIENTS**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

## **8. MANAGEMENT FEES**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

## **9. RECYCLED PAPER - PART 31 RECIPIENTS - STATE, TRIBES & LOCAL GOVERNMENTS**

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

## **10. RECYCLED PRODUCTS - STATE AGENCIES AND POLITICAL SUBDIVISIONS**

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

## **11. REIMBURSEMENT LIMITATION**

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

## **12. SINGLE AUDIT ANNUAL REPORTING REQUIREMENT**

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after

receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. For fiscal periods 2002 to 2007 recipients are to submit hardcopy to the following address:

Federal Audit Clearinghouse  
1201 East 10<sup>th</sup> Street  
Jeffersonville, IN 47132

For fiscal periods 2008 and beyond the recipient **MUST** submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>

### 13. SUBAWARDS

- a. The recipient agrees to:
  - (1) Establish all subaward agreements in writing;
  - (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
  - (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
  - (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
  - (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
  - (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
  - (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
  - (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

### 14. SUSPENSION & DEBARMENT: 2 CFR PART 1532

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

### 15. TRAFFICKING VICTIMS OF 2000 - PART 31 RECIPIENTS

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized



to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

**Prohibition Statement** - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

## **16. UNLIQUIDATED OBLIGATIONS - INTERIM FFR - PART 31 RECIPIENTS**

### **Submission of interim Federal Financial Reports**

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the end of the reporting quarter.

The following reporting period end dates shall be used for interim reports: 7/31.

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, PO Box 98515, Las Vegas, NV 89193, or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

## **Programmatic Conditions**

### **1. ENVIRONMENTAL RESULTS - RECIPIENT PERFORMANCE REPORTING**

**Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B)**

Performance Reports:

In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

### **2. NATIONAL HISTORIC PRESERVATION ACT**

Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable shall assist EPA in complying with any requirements of the Act and implementing regulations.

#### **Revolving Loan Fund (RLF) Terms and Conditions**

FY2010 Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under CERCLA 104(k) and those that chose to transition to 104(k).

They do not apply to pre-FY 2003 grants subject to 104(d).

### **I. GENERAL FEDERAL REQUIREMENTS**

#### **A. 1. Federal Policy and Guidance**

a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2010 competition for Brownfields RLF cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

b. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

c. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

d. If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and environment.

#### **2. Borrowers and Subgrant recipients:**

a. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants and 40 CFR 30 and OMB Circular A-21 for educational institutions that are recipients of subgrants.

b. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions.

c. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## B. Eligible Brownfields Site Determinations

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.
2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
3. For any petroleum-contaminated brownfields site that is not included in the CAR's EPA approved workplan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines for Brownfields Revolving Loan Fund Grants* dated August 2009 for discussion of this element) documenting that :
  - a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
  - b. the State determines there is "no viable responsible party" for the site;
  - c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
  - d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.
5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
6. EPA must also make all determinations on the eligibility of petroleum contaminated brownfields sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 3.

## II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.
2. If after 3 years, EPA determines that the recipient has not made sufficient progress in implementing its RLF, EPA may terminate the agreement. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring

of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

## **B. Substantial Involvement**

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. Generally, this prohibition prohibits a grant or loan recipient from using grant funds to cleanup a site if the recipient is potentially liable under §107 of CERCLA for that site.
  - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
  - e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.
  - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

## **C. Cooperative Agreement Recipient Roles and Responsibilities**

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.
  - a. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 40 CFR Part 31.
  - b. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

## **D. Quarterly Progress Reports**

1. The CAR must submit progress report on a quarterly basis (30 days of the end of each federal fiscal quarter) to the EPA Project Officer. Quarterly progress report must include:
    - a. Summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
    - b. An update on project schedules and milestones.
    - c. A list of the loans and/or sub-grants awarded during the reporting quarter.
    - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.
    - e. If applicable, a separate budget recap summary table as described on D.1.d must be submitted for brownfields petroleum projects.
  2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
  3. If applicable, the CAR must maintain records that will enable it to report to EPA on the amount of funds expended on petroleum properties addressed under this cooperative agreement.
  4. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.
5. **Absent a Property Profile Form** and consistent with the EPA approved work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:
- a. Acres per property
  - b. Assessments started/completed
  - c. No cleanup required
  - d. Types of contaminants found
  - e. Acres of greenspace created
  - f. Engineering/institutional controls required, what type and whether they are in place
  - g. Cleanup plans
  - h. Redevelopment underway
  - i. Funds leveraged
  - j. Jobs leveraged
  - k. Health monitoring studies, insurance, institutional controls funded

#### **E. Property Profile Submission**

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

#### **F. Final Report**

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. Cost Share Requirement (Not applicable if cost -share is waived by EPA )**

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal

source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

**B. Eligible Uses of the Funds for the Cooperative Agreement Recipient , Borrower, and/or Subgrant Recipients**

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.
  - a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at petroleum-only brownfields sites.
  - b. At least 60% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 40% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to \$200,000 per site). Pursuant to a recent policy change, the CAR may request a waiver to the 40% cap on subgrant fund. The CAR may also request a waiver to the \$200,000 per site subgrant limit. Please consult with your Regional Project Officer for the necessary information to submit to request either or both of these waivers.
  - c. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. The entities eligible for discounted loans are provided below.
  - d. To determine whether a cleanup subgrant is appropriate, the CAR must consider:
    - i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
    - ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
    - iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and
    - iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:
  - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA 104(k);
  - b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Ensuring that public participation requirements are met. This includes developing or funding a community relations plan which will include reasonable notice, opportunity for involvement, and response to comments;

- d. Establishing an administrative record for each site;
  - e. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;
  - f. The development of Quality Assurance Project Plans (QAPPs) as required by Part 31 and Part 30 regulations;
  - g. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;
  - h. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;
  - i. For petroleum sites, an analysis of cleanup alternatives would include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures;
  - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.
  - k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 1; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and
  - l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.
- 3. No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved workplan. The CAR must maintain records on funds that will be used to carry work and document that funding limitations are met.
  - 4. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

**C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient , Borrower, and/or Subgrant Recipients**

- 1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrant recipient for any of the following activities:
  - a. Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
  - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.

- c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use;
  - d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
  - e. To pay for a penalty or fine.
  - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
  - g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.
  - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR and subgrantees.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
  - b. Ineligible grant or subgrant administration costs include direct costs for:
    - i. Preparation of applications for US EPA Brownfields grants and subgrants;
    - ii. Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
    - iii. Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
    - iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
    - v. Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
    - vi. Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
    - vii. Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
    - viii. Close out under 40 CFR 30.71 and 40 CFR 31.50.
    - ix. Borrowers are subject to the CERCLA 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees from using loans financed with cooperative agreement funds for administrative costs.
  - c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.



- d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:
- i. Preparation of applications for loans and loan agreements;
  - ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
  - iii. Maintaining and operating financial management and personnel systems;
  - iv. Preparing payment requests and handling payments; and
  - v. Audits.
  - vi. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:
  - vii. Salaries, benefits and other compensation for person who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);
  - viii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
  - ix. Supplies and equipment not used directly for cleanup at the site.
  - x. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.
  - xi. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

3. Cooperative agreement funds may not be used for any of the following properties:

- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
- b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
- c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or
- d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

**D. Subgrant Recipient and Borrower Eligibility**

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded.